

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARIO CANODY,

Petitioner, No. CIV S-04-1168 FCD KJM P

vs.

SCOTT KERNAN, Warden,

Respondent. ORDER

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's September 9, 2005 dismissal of his application for a writ of habeas corpus as duplicative. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b).

Where, as here, the petition was dismissed on procedural grounds, a certificate of appealability "should issue if the prisoner can show: (1) 'that jurists of reason would find it

1 debatable whether the district court was correct in its procedural ruling'; and (2) 'that jurists of  
2 reason would find it debatable whether the petition states a valid claim of the denial of a  
3 constitutional right.'" Morris v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v.  
4 McDaniel, 529 U.S. 473, 120 S.Ct. 1595, 1604 (2000)).

5 After careful review of the entire record herein, this court finds that petitioner has  
6 not satisfied the first requirement for issuance of a certificate of appealability in this case.  
7 Specifically, there is no showing that jurists of reason would find it debatable whether petitioner  
8 had filed a duplicative petition. Accordingly, a certificate of appealability should not issue in this  
9 action.

10 IT IS SO ORDERED.

11 DATED:September 22, 2005

13 /s/ Frank C. Damrell Jr.  
14 FRANK C. DAMRELL JR.  
United States District Judge